

Activism Defense and Preparedness:

Three ways boards can prepare

Boards of directors are facing intensifying scrutiny and heightening expectations — about directors' skills, qualifications, tenure, recency of experience and boardroom diversity. And with all director candidates — both board- and investor-nominated candidates — now on a universal proxy card, individual directors are under the microscope as never before.

In our long experience as trusted advisers to boards facing pressure on their board composition and individual directors, in particular from activist shareholders, Spencer Stuart's Activism Defense and Preparedness Group knows that boards require agile teams that can work swiftly and collaboratively with the board, management and other advisers. Our specialized practice focuses on advising our clients on how best to navigate these boardroom situations.

In our experience, three practices are essential for boards as they prepare for the proxy season and ongoing engagement with stakeholders.

1. Proactively assess your board and identify potential vulnerabilities

Do you have the right talent in the boardroom given the company's forward-looking strategy and risks? That's the fundamental question being asked by investors as they evaluate boards. To answer the question, boards should:

- » **Ensure that it has a range of tools to assess the board.** Robust skills matrices, meaningful board evaluations, constructive peer evaluations and third-party evaluations can ensure that the board has the skills and perspectives appropriate for its unique considerations. These tools can also balance the skills and perspectives needed in the boardroom today against the needs going forward.
- » **Reexamine mandatory retirement policies.** Boards can review their reliance on mandatory retirement policies, and instead consider adopting a culture of continuous evolution.
- » **Address director underperformance.** Boards can promptly and courageously address director underperformance by articulating expectations for improvement, seeking the director's resignation or determining to not renominate the director.
- » **Anticipate director-specific vulnerabilities.** The universal proxy ballot has made proxy contests more personalized, with activists singling out particular directors for attention. Boards should anticipate potential challenges to individual directors by objectively assessing potential vulnerabilities — age, tenure, recency of experience, experiences on other boards, etc. — of each director and proactively considering responses to challenges.

2. Enhance the narrative on board composition disclosures

Proxy statements, once largely considered a compliance obligation, are now a communications tool — a key way for boards to document their governance practices, provide a rationale for the board's composition and explain how each director's skills, experiences and backgrounds add value. Our analysis of proxy statements finds significant variability around the quality of director-specific and board-related proxy statement disclosures.

All boards should annually evaluate the proxy statement and enhance as warranted. Some approaches for evaluating proxy disclosures include:

- » **Take a step back.** Bring in a fresh set of eyes to provide an independent and objective view of how successfully disclosures articulate the strategy underlying the board's composition and how each director's skills, qualifications and backgrounds support the boardroom composition goals.
- » **Assess the current skills matrices.** Now is the opportunity to review the quality of the skills matrices used internally and/or included in proxy statements. To maximize the effectiveness of the matrix, formalize definitions for each category on the matrix, including qualifications connected to recency of experience. To avoid over-filled matrices with directors checking nearly all the boxes, consider asking directors to weight each skill (very strong, moderately strong, weak, none) and/or asking directors to identify their top four to five skills.
- » **Ensure robust diversity disclosures.** Make sure your board provides strong disclosures around board diversity beyond skills and experiences to include gender, race, ethnicity and sexuality.

3. Commit to a boardroom culture that appreciates the value of board refreshment

Boards should adopt a culture of continuous evolution, with new directors and fresh perspectives added at least every other year. To support this culture, boards should ensure that each director — new or incumbent — understands that his/her board appointment is not a guaranteed decade-plus role, and that renomination is based solely on boardroom needs and director performance. This tenet should be explained at the initial appointment of any new director and reinforced every year when considering the re-appointment of existing directors.

Conclusion

Interest in the board and individual directors is only expected to increase. The best defense is a good offense. Boards can and should take steps now to enhance their composition and disclosures. Failure to be proactive may result in an activist doing this work for the board.

Spencer Stuart's Activism Defense and Preparedness Group

Our Activism Defense and Preparedness Group is a cross-discipline team within the firm's Boards Practice including professionals with deep experience in corporate governance and the boardroom and activism situations, always supported by colleagues with relevant, specialized industry expertise.

We bring to each situation a deep knowledge of director candidates, their availability and performance in the boardroom. Our decades of experience contribute to our

knowledge of activists and our understanding of investor views of board composition and other governance issues.

We are proud of our long record helping boards of small-, mid- and large-cap companies on needs ranging from the evaluation of board composition and director vulnerabilities to the rapid referencing of activist-suggested candidates and the recruitment of directors in extremely compressed time frames.

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